

Application No.: 10/784,573
Dated: May 29, 2007
Response

REMARKS/ARGUMENTS

The Examiner has subjected the present application to a restriction requirement under 35 USC §121, identifying the following claim groups: Group I, claims 1 through 13, drawn to a device, method and system for determining the optical retardation value of an anisotropic material, classified in class 356, subclass 365; and Group II, claims 14 through 15, drawn to a Fourier Transform near IR spectrophotometer, classified in class 356, subclass 451. Favorable action is respectfully solicited in view of the following.

The Examiner has subjected the present application to a restriction requirement under 35 USC §121 by identifying the following two claim groups:

Group I. Claims 1 through 13, drawn to a device, method and system for determining the optical retardation value of an anisotropic material, classified in class 356, subclass 365; and

Group II. Claims 14 through 15, drawn to a Fourier Transform near IR spectrophotometer, classified in class 356, subclass 451.

The Examiner contends that restriction is proper because the inventions of Groups I and II are distinct, each from the other, because of the following reasons.

Inventions II and I are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility

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such as a reflectance measurement device. See MPEP § 806.05(d).

Because these inventions are independent or distinct for the reasons given above and *there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search* (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper. *[Emphasis added.]*

The Applicants provisionally elect the Group I claims and respectfully traverse this restriction requirement.

Applicants respectfully submit that the two "invention groups" do not in fact represent separate and distinct inventions. The claimed invention relates to an apparatus and system for determining the optical retardation value of an anisotropic material. While the Group I claims relate to a device, method and system for determining the optical retardation value of an anisotropic material, and the Group II claims relate to a Fourier Transform near IR spectrophotometer, it is respectfully submitted that the Fourier Transform near IR spectrophotometer claimed in the Group II claims is peculiarly related to the device, method and system for determining the optical retardation value of an anisotropic material of the Group I claims. Accordingly, it is respectfully submitted that the conclusion that the claims, as grouped by the Examiner in the formation of the instant requirement for restriction, define different and distinct inventions is improper.

It is further submitted that the claims of the designated groups have not necessarily acquired a separate and distinct status in the art for examination

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purposes, notwithstanding possible different art classifications that may have been artificially assigned thereto in the U. S. Patent and Trademark Office. Art very relevant to the patentability of the Group II Fourier Transform near IR spectrophotometer claims might very logically be found in the art class assigned to the Group I device, method and system for determining the optical retardation value of an anisotropic material claim group. The classifications cited in support of the restriction requirement are merely used for cataloging purposes and it is not conclusive of the propriety of such a requirement. It is further submitted that an important advantage in pursuing just one application encompassing all claim groups is that the examination work of the Patent and Trademark Office would be simplified, insofar as duplication of searching effort would be eliminated.

In view of the foregoing remarks, it is respectfully requested that the Examiner reconsider and withdraw the requirement for restriction and allow all pending claims to be prosecuted in the same application, as directed by MPEP §803. Notwithstanding the above arguments and the request for reconsideration, in the event that the requirement is made final, and in order to comply with 37 C.F.R. 1.143, the applicant provisionally elects claims 1 through 13 (Group I), holding claims 14 through 15 (Group II) in abeyance under the provisions of 37 C.F.R. 1.142(b), until the final disposition of the elected claims.

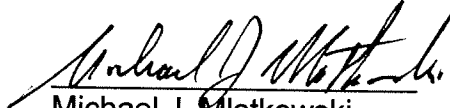
The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-2478(13791).

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It is respectfully submitted that the present claims are in condition for allowance. Prompt notification of allowance is respectfully solicited.

Respectfully submitted,

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